

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-173

AUGUST TERM, 2003

	}	APPEALED FROM:
	}	
Lois Hanson	}	Commissioner of Labor & Industry
	}	
v.	}	DOCKET NO. A-25010
	}	
J. Graham Goldsmith	}	
	}	
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Claimant Lois Hanson appeals from the Vermont Department of Labor's decision that A home help@ expenses are not compensable under the Workers= Compensation Act. Claimant argues that the Department erred because A home help@ should fall within the definition of A medical benefits@ under 21 V.S.A. ' 640. We affirm.

The parties stipulated to the following facts. In 1988, claimant was injured when she slipped and fell while working for J. Graham Goldsmith. She suffered an injury to her kneecap and received temporary total and permanent partial benefits. In 1993, the employer agreed to provide claimant with A medical, hospital, surgical and nursing services and supplies in accordance with the provision of 21 V.S.A. ' 640@ for forty-three weeks. During this time, the employer paid for someone to help claimant with A household cleaning and chores@ for eight hours per week. In 1997, the employer sought to terminate all benefits, but the Department ruled that claimant= s medical benefits were to be kept open. The employer has not paid claimant= s A home help@ bills since 1997 when it sought to terminate all benefits.

Claimant requested a hearing to determine whether her A home help@ bills were compensable under the Workers= Compensation Act. In support of her position, she submitted a statement from her treating physician, Dr. Diane Rippa, that she A must have 8 hours of home health care weekly@ to assist her with A performance tasks that [she] cannot perform herself@ due to her knee injury. Dr. Rippa A recommended for medical reasons@ that claimant receive home help to reduce the strain on her knee. Jonathan Fenton, D.O., performed an independent medical examination of claimant and concluded that A based on [claimant= s] history, . . . the home health assistance she is requesting is reasonable, necessary and related to the traumatic arthritis she has developed from her 1998 injury. However, such care is for assistance with ADL functions and does not represent medical, nursing or physical therapy treatment.@

Based on the stipulated facts, the Department concluded that the A home help@ services claimant requested were not compensable under 21 V.S.A. ' 640(a) because claimant sought compensation for housekeeping services only, with no aspects of nursing care. The Department explained that in Close v. Superior Excavating Co., 166 Vt. 318, 321 (1997), this Court affirmed a decision to award payment for spousal nursing services that went beyond housekeeping. As the Department stated, A > [w]hile A attendance@ in the nursing sense is covered, . . . a line has been drawn between nursing attendance and services which are in essence housekeeping.= @ Given the design of the workers= compensation system, where a claimant A need not prove fault and the employer has limited liability, the Legislature necessarily chose to cover some, but not all, potential services for an injured worker.@ Consequently, the Department concluded, without a statutory provision specifying that housekeeping services with no element of nursing care are compensable, A clear precedent dictates that they are not.@ This appeal followed.

Our review in this case is limited to the question of law certified to this Court by the Commissioner of the Department

of Labor and Industry. 21 V.S.A. ' 672. When the issue involves a question of statutory interpretation, we defer to the agency= s interpretation of statutes that it is empowered to enforce. See Close, 166 Vt. at 321. We presume that an agency= s decisions made within its area of expertise A are correct, valid, and reasonable, absent a clear showing to the contrary.@ Id.

Claimant contends that her home help services should be compensable under the Workers= Compensation Act because the services were medically necessary and thus fall within 21 V.S.A. ' 640(a). She asserts that under the A flexible approach@ to determining whether services are compensable under the Act, discussed in Close, housekeeping services should be construed as reasonable medical or nursing services when they are A medically necessary.@ Claimant also argues that housekeeping services should be compensable under the Workers= Compensation Act as a matter of public policy.

Title 21 of V.S.A. ' 640(a) requires an employer to supply A reasonable surgical, medical and nursing services and supplies to an injured employee.@ The Department concluded that housekeeping services did not fall within the statute. Claimant has not demonstrated that this conclusion is clearly incorrect, invalid, or unreasonable. See Close, 166 Vt. at 321. By its terms, the statute does not obligate an employer to provide all services alleged by claimant to be A medically necessary.@ In Close, we concluded that a claimant= s spouse had provided compensable A nursing services@ by providing services that involved some degree of skilled nursing care. See id. at 322. The compensable services at issue in that case included twenty-four hour supervision of claimant, administering, altering, and monitoring medications, keeping a behavior log, monitoring seizure activity and responding appropriately. Id. at 320. In contrast, the services for which claimant seeks compensation here are solely housekeeping services that do not involve any aspect of nursing care. Claimant= s assertion that these services are A medically necessary@ does not transform them into A reasonable medical [or] nursing services@ covered by 21 V.S.A. ' 640(a).

The A flexible approach@ discussed in Close does not mandate a different result. See id. at 321-24. We stated in Close that A [a] number of other states . . . have recognized spousal care as compensable when the services provided go beyond ordinary household duties.@ Id. at 321 (citing cases). We explained that other states have considered such factors as A the nature of the services provided, the need for continuous care, the employer= s knowledge of the nature of the injury and the medical condition of the claimant, and whether a reasonable value may be assigned to the services provided.@ Id. at 322. The flexible approach to determining whether services are compensable under the Act presupposes that the services involved go beyond ordinary household duties and involve some element of nursing care. See id. at 321. In this case, unlike Close, claimant stipulated that she is seeking compensation for someone to provide A household cleaning and chores.@ These duties do not go beyond ordinary household duties and they are not compensable under the statute. Title 21 ' 640(a) covers A reasonable surgical, medical and nursing services and supplies;@ it does not require an employer to provide all services requested by an injured employee. For that reason, we reject claimant= s argument that housekeeping services should be covered for public policy reasons. As the Department noted, in fashioning the workers= compensation system, the Legislature has chosen to cover some, but not all, potential services. We therefore conclude that the Department properly determined that the services requested by claimant were not compensable under the Workers= Compensation Act.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice